

# Business Property Exclusion in Medicaid Cases

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## Waltzing Matilda

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- ❖ Waltzing Matilda – Name and melody mislead people
- ❖ Medicaid is similar in that the name, the historical reputation, and the restrictions mislead people.
- ❖ “Lay people tend to lay hold of the general rule and will not let go. Lawyers are trained to look for the exceptions, for therein lies the value you can use to benefit your client.”

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# Business Property Exclusion in Medicaid Cases

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- ❖ Medicaid is a perfect example
  - Lay people tend to hold onto the \$2,000.00 in countable resources and the welfare model from 1965 and will not let go
  - But Congress changed Medicaid into a middle-class program (e.g., single person eligible to own \$603,000.00 in homestead equity) for people with substantial assets (with vestiges of a welfare program)
  - It should be called Medicaid for the Middle-Class or Middle-Class Medicaid.
- ❖ This presentation is about helping a client to exclude business property from being a countable resource
- ❖ Round Top Case

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# Business Property Exclusion in Medicaid Cases

## Scope of Presentation

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- ❖ Business property exclusion in long-term care Medicaid
  - Medicaid rules and supplemental security income rules
  - Elements of rules
  - Evidence to demonstrate the existence of an excludable business
  - Practical tips in working with clients
- ❖ Outside scope of paper:
  - Nonbusiness property essential to self-support

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## Sources of Law

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- ❖ U.S. Constitution
- ❖ Federal SSI and Medicaid Rules – 42 U.S.C. and The Social Security Act, Titles XVI & XIX
- ❖ Federal SSI Rules – 20 C.F.R. Part 416
- ❖ Federal SSI Policy – POMS
- ❖ Texas Constitution
- ❖ Texas Statutes – Texas Government Code, Chapter 531
- ❖ Texas Rules – Texas Administrative Code
- ❖ Texas Medicaid Policy – MEPD Handbook

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## Federal Statute

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- ❖ 42 U.S. Code § 1382b (a)(3) also § 1613 of the Social Security Act
- ❖ Property that is Essential to Self-Support

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## Title search: Business Property Exclusions in Medicaid Cases

Also available as part of the eCourse

[2021 Estate Planning, Guardianship, and Elder Law eConference](#)

First appeared as part of the conference materials for the

23<sup>rd</sup> Annual Estate Planning, Guardianship and Elder Law Conference session

"The Medicaid Exclusion for Business Property: Protecting Clients' Farms, Ranches and Other Businesses"